

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**RAYMOND E ONORATO**  
Claimant

**APPEAL NO: 18A-UI-02218-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/21/18**  
**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Hy-Vee (employer) appealed a representative's February 9, 2018, decision (reference 01) that concluded Raymond Onorato (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 14, 2018. The claimant participated personally. The employer was represented by Keith Mokler, Hearings Representative, and participated by Ron Carruthers, Assistant Director of Store Operations. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed services for the employer from July 24, 2015, to March 4, 2017, as a meat clerk. The claimant stopped working on March 5, 2017, because of an Achilles tendon injury for which he had surgery. The injury took months to heal. On January 22, 2018, the claimant went into the store to talk to the store director about returning to work. The director did not know what positions were open and had to contact the human resources department. Human Resources contacted the claimant on January 26, 2018, and offered him a job at the same pay grade in the kitchen. There was no longer a job available as a meat clerk. On February 5, 2018, the claimant refused the job because he thought he might find a job elsewhere.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is not able and available to work.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

Iowa Admin. Code r. 871-24.23(18) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

When an employee is medically unable to perform work, he is considered to be unavailable for work. The claimant was medically unable to perform work for a number of months and has not provided a note from a medical professional indicating he has been released to return to work. He is considered to be unable to work.

When an employee limits his availability to a specific type of work, he is considered to be unavailable for work. The claimant limited his availability at Hy-Vee and would not work in the kitchen. He is considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits due to being unable and unavailable to work.

**DECISION:**

The representative's February 9, 2018, decision (reference 01) is reversed. The claimant is not able and available for work as of January 21, 2018.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs